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August 25, 2006

Mary Cottrell
Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Massachusetts Electric Company and Nantucket Electric Company, D.T.E. 06-5

Dear Ms. Cottrell:

On August 23, 2006 Massachusetts Electric Company ("Mass. Electric") and Nantucket Electric Company ("Nantucket") d/b/a National Grid (collectively, "National Grid" or "Company") filed with the Department of Telecommunications and Energy ("Department") its *Response to the Comments of the Attorney General, D.T.E. 06-5* ("National Grid Response"). The Attorney General seeks leave to submit his reply to the National Grid Response to assist the Department in its decision-making.

National Grid asserts that the Department must accept National Grid's proposed rate increase because federal law and Federal Energy Regulatory Commission ("FERC") jurisdiction preempts the Department's rate-making authority.[1] The Attorney General, however, does not call into question FERC's conditional approval of the RMR rates, and thus does not seek to compel the Department to usurp FERC's jurisdiction over setting wholesale rates. The Attorney General simply asks the Department to investigate and set for hearing the issue of whether National Grid fulfilled its statutory obligation to pass on only reasonable and prudently incurred costs to retail ratepayers. The Department would neither preempt federal law nor encroach on FERC jurisdiction by investigating this issue. In *Commonwealth Electric Company v. D.P.U.*, the SJC rejected the petitioner's argument that the Department's inquiry into a retail seller's prudence in incurring a particular cost was preempted by federal law and FERC jurisdiction.[2] "[T]he Federal regulation of the rates for wholesale transactions is not disturbed by [the

[1] *National Grid Response* at pp. 2-3.
[2] 397 Mass. 361, 491 N.E. 2d 1035, *cert denied* 481 U.S. 1036 (1987).

Department's] inquiry into the prudence of a retail seller … in incurring particular costs."[3] National Grid cites *Eastern Edison* as support for its assertion that the Department must accept National Grid's pass-through of RMR rates.[4] The Supreme Judicial Court, however, explicitly stated that the Department's prudence review was not an issue in *Eastern Edison*, and that *Eastern Edison* was therefore not controlling in *Commonwealth Electric*. The Department may assert jurisdiction over the issue of whether National Grid prudently incurred these costs and that overall rates paid by customers only represent just and reasonable costs.[5]

A prudence inquiry is particularly important under the circumstances of this case. Because National Grid operates under a long-term rate plan, the Company may inappropriately profit by deferring system upgrades, and shift the predictable consequences of these deferrals -- higher costs related to system deficiencies -- to customers in the form of increased supply-related charges under ISO-NE cost classifications. The Company is in the third phase of a distribution rate plan related to the National Grid merger, involving an initial rate reduction, a 5-year freeze period, followed by a 5-year period where the plan strictly limits distribution rate increases with an index. *NEES-EUA Merger*, D.T.E 99-47 (2000). The Department recently refused to approve a utility's attempt to avoid the consequences of a rate freeze by shifting costs out from freeze period: "The Department cannot permit companies to retain all potential [merger] savings realized but pick and choose the costs that will be absorbed during a rate freeze period."[6] Nothing in the National Grid merger settlement permits it to shift the costs of system requirements to customers in the form of supply-related charges.[7] Customers are entitled to the full benefit of the merger rate plan.

National Grid also fails to substantiate that it reasonably and prudently incurred the RMR rates. The National Grid Response, in fact, attempts to supplement the Company's initial petition by stating alleged facts that do not appear in the pre-filed testimony. The National Grid Response refers to "associated transmission upgrades at the E. Methuen substation" and "the Wakefield Junction substation project".[8] None of National Grid's witnesses, however, mention these projects in their pre-filed testimony. To the extent that National Grid attempts to introduce new information into this proceeding, the Department should disregard it. The substantial dispute involving what the Company did and did not do only highlights the need for a full

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[3] *Id.* at p. 378.

[4] National Grid Response at p. 2.

[5] M.G. L. c. 164, § 94.

[6] *NSTAR*, D.T.E. 03-47-A, p. 33 (2003). *See also North Attleboro Gas*, D.P.U. 93-229, p. 6 (1993) (a utility may not defer a cost during the period covered by a rate settlement that fixes rates unless specifically allowed by the terms of the agreement).

[7] According to the Supreme Court, a state utility commission certainly may examine a utility's "overall financial structure . . . to determine whether the company has experienced savings in other areas which might offset the increased [FERC charge]." *Nanthala Power and Light Company vs. Thornburg*, 476 U.S. 953, 967 – 968 (1986) citing *Narragansett Electric Company v. Burke*, 119 R.I. 559 (1977), *cert. denied* 435 U.S. 972 (1978).

[8] *Response* at p. 3.

inquiry.

The Attorney General requests that the Department suspend the proposed transmission rate increase for future review and reconciliation. The Department should not rely on the Company's unsworn and unexplored statements and instead open an investigation, including discovery, hearings and briefs, into the Company's calculations, basis for the requested rate increase and any factors that merit offsetting rate adjustments.

Respectfully submitted,
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By: _____
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Cc: Service List